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SUMMARY

NYNEX Corporation ("NYNEX") hereby submits comments in response to the Notice of Proposed Rulemaking ("NPRM") on rules for the provision by Bell Operating Companies ("BOCs") of electronic publishing, alarm monitoring and telemessaging services under sections 274, 275, and 260 of the Telecommunications Act of 1996 (the "1996 Act"). NYNEX urges the Commission to adopt rules which protect against potential misuse of market power by the BOCs without imposing excessive, duplicative or inflexible regulation which would impede the BOCs from appropriately using their economies of scope and other efficiencies to benefit consumers. In so doing, the Commission will help achieve the new pro-competitive, deregulatory national policy framework sought by Congress in passing the 1996 Act. NYNEX's comments in this proceeding are consistent with the attainment of these goals and will focus on the following areas:

Scope of Section 274; Relationship to Section 272. Section 274 covers the BOC provision of both interLATA and intraLATA electronic publishing. Congress clearly intended that a BOC may provide both electronic publishing and services covered by section 272 in the same affiliate, provided that such affiliate complies with the requirements of both sections 274 and 272 on a service by service basis.

Definition of Electronic Publishing. Congress intended that electronic publishing consist of a BOC's controlling, or having a financial interest in, information transmitted over its own local exchange network. Control of, or financial interest in, information

alone is not electronic publishing under the 1996 Act. Mere transmission of information by a BOC also does not qualify as electronic publishing.

Structural Separation and Transactional Requirements. Congress authorized the BOCs to engage in electronic publishing in accordance with rules specifically enumerated in section 274. The NPRM appears to consider expanding those carefully-crafted Congressional provisions in a way that would undermine the operational efficiencies and economies of scope that the BOCs could otherwise pass on to consumers in the form of new products and lower prices. Apart from the “accounting principles” to be addressed in the Accounting NPRM, the statute itself provides all of the required conditions and safeguards. The Commission should refrain from establishing onerous and duplicative additional regulations.

Support Services. Because a section 274 affiliate cannot be owned by a BOC, the 1996 Act clearly presupposes a holding company structure, performing corporate governance functions for the BOC, section 274 affiliate(s) and other owned entities. In addition, although the statute specifically requires that the section 274 affiliate have no officers, directors, or employees in common with the BOC (section 274(b)(5)(A)), Congress did not require that either entity forego the economies of scope and scale which are traditionally secured by a multi-product firm through the placement of common administrative functions, including personnel, support systems and facilities, in a separate entity -- whether in the holding company itself or in a service entity subsidiary. The common provision of such services is necessary to achieve the legislative purpose of effective and efficient competitive market entry by the BOC affiliate. The Commission

should reject efforts by competitors to handicap such entrants with structural requirements and constraints. Absent legislative direction to the contrary, the Commission should instead continue its pro-competitive approach towards enabling operating efficiencies for the benefit of consumers, while addressing concerns over cost shifting through price cap regulation and any necessary accounting safeguards.

Similarly, the statutory requirement for the BOC and the affiliate to “operate independently” (section 274(b)) does not preclude the provision of common governance and administrative support functions to both the BOC and its affiliates. The statutory language simply mirrors the language of the Commission’s regulations from the Second Computer Inquiry proceeding.¹ This language has never precluded traditional holding company activities or common support services on a centralized basis. Nothing in section 274 requires the Commission to modify its past practice and precedent by establishing new regulatory constraints which would impair operating efficiencies.

Marketing Provisions. Congress intended the joint marketing restrictions contained in section 274(c) to apply only to the BOC. A separated affiliate is free to engage in a broad range of activities relating to the marketing of BOC and affiliate services. Permitting a separated affiliate to jointly market electronic publishing services and a BOC’s telecommunications services is consistent with the Congressional goal to

¹ See 47 C.F.R. § 64.702 et seq.

provide consumers with “one-stop shopping.” Section 274 permits BOCs to engage in a broad range of inbound telemarketing activities with a separated affiliate. Section 274 permits a BOC to enter into a wide variety of teaming activities with a separated affiliate. The Commission’s rules should not limit these inbound telemarketing or teaming activities beyond the specific requirements of the statute.

Nondiscrimination Safeguards. The Commission asks how it should treat existing regulatory constraints, given the legislative decisions made in the 1996 Act. In doing so, the Commission recognizes that its current regulations may be inconsistent with the 1996 Act or rendered unnecessary by its requirements. The Commission is correct -- much of the regulatory structure (e.g., CI-II, CI-III and CEI regulations and policies) can and should be eliminated in this and related proceedings.

Alarm Monitoring. Regulations implementing the alarm monitoring provisions of section 275 should not permit any expansion of the definition of alarm monitoring to include any service which does not include each and every component listed in section 275(c).

Telemessaging. Section 260, which governs the BOC provision of telemessaging, covers both intraLATA and interLATA telemessaging services. Because telemessaging is an information service, a BOC providing an interLATA telemessaging service would have to do so through a separate affiliate in accordance with section 272. However, Congress did not require a separate affiliate for intraLATA information services. If a consumer

separately purchases an information service, the structural safeguards of a separate affiliate are not warranted simply because the consumer happens to use an interLATA service provided by another entity to access the information service. However, if the consumer purchases a combined or bundled service consisting in part of an information service and in part of an interLATA service, the combined service should be considered an interLATA information service subject to the separate affiliate requirements. This reading is supported by prior interpretations under the MFJ.

Enforcement Processes. The Commission is also considering changes to its complaint procedures as a means to enforce its section 274 rules. The statute does not warrant a shift of traditional evidentiary burdens to the BOCs from complainants. Such a change would invite competitors to use regulatory strategies -- instead of marketing acumen and technological innovation -- to stifle new entrants and other market participants. Instead, the Commission must be specific in its criteria for presenting a prima facie complaint under section 274.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|---------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| Implementation of the |) | CC Docket No. 96-152 |
| Telecommunications Act of 1996: |) | |
| |) | |
| Telemessaging, |) | |
| Electronic Publishing, and |) | |
| Alarm Monitoring Services |) | |

NYNEX COMMENTS

NYNEX Corporation ("NYNEX"), on behalf of its operating subsidiaries, hereby files its Comments in response to the Notice of Proposed Rulemaking, released July 18, 1996 ("NPRM"), in the above-captioned proceeding. This proceeding will establish rules to clarify and implement the non-accounting separate affiliate and nondiscrimination safeguards prescribed by Congress in sections 274, 275 and 260 of the Telecommunications Act of 1996 (the "1996 Act") with respect to the provision by Bell Operating Companies ("BOCs") of electronic publishing, alarm monitoring and telemessaging services. The FCC initiated this proceeding in conjunction with interrelated separate proceedings which consider rules by which the BOCs may provide

interLATA information services, in-region long distance services, and manufacturing¹ and the accounting safeguards applicable to all of these services.²

I. INTRODUCTION

In sections 274, 275, and 260, the 1996 Act provides the legislative framework for the BOCs to provide electronic publishing, telemessaging and alarm monitoring services. In enacting this legislation, Congress fully recognized and hoped to achieve the pro-competitive effects and other consumer advantages of eliminating artificial statutory and regulatory barriers to full BOC participation in these and other telecommunications markets. This Congressional intent is clearly reflected in the stated purpose of the 1996 Act to establish “a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.”³

This proceeding is one of a series of interrelated rulemakings in which the Commission must establish rules that will implement the 1996 Act. In this proceeding, the Commission also has appropriately recognized that permitting the BOCs to engage in

¹ Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, CC Docket 96-149, Notice of Proposed Rulemaking, FCC 96-308, released July 18, 1996 (“In-Region NPRM”).

² Accounting Safeguards for Common Carriers under the Telecommunications Act of 1996, CC Docket No. 96-150, Notice of Proposed Rulemaking, FCC 96-309, released July 18, 1996 (“Accounting NPRM”).

³ Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. Preamble (1996) (“Conference Report”) at 113.

electronic publishing and other information services will both foster competition and benefit consumers:

“The provision by the BOCs of such interLATA information services offers the prospect of fostering vigorous competition among providers of such services, because of the unique assets that the BOCs possess. BOCs can offer a widely recognized brand name that is associated with telecommunications services, the benefits of “one-stop shopping,” and other advantages of vertical integration” (NPRM ¶ 6).

“The 1996 Act seeks to eliminate artificial statutory and regulatory barriers to entry into telecommunications markets. Such barriers may be particularly inimical to the interests of consumers when the excluded potential entrants are engaged in a complementary business and, as a consequence, could realize economies of scope (both technical and marketing) if they were allowed to enter. Such economies of scope should benefit consumers in both the markets in which the entrant currently offers service and the market it seeks to enter” (NPRM ¶ 5).

Our Comments urge Commission action to secure these above-noted benefits for consumers. Allowing the BOCs to engage in complementary businesses such as electronic publishing and other information services under reasonable rules will benefit consumers by affording them such advantages as “one-stop shopping” and other features and services that can effectively be offered by firms with large scale operations. For this reason, we agree with the Commission that any rules adopted to prevent potential anticompetitive behavior by the BOCs must achieve that objective “without depriving those carriers of legitimate competitive advantages that can benefit both subscribers to their monopoly local services and consumers of the carriers’ new services.” See NPRM ¶ 8.

The Commission can achieve the objective of protecting against potential misuse of market power by the BOCs without imposing excessive and inflexible regulation. The

safeguards that are listed in sections 274, 275 and 260, if appropriately interpreted by the Commission in this proceeding, along with FCC price cap regulation and any accounting safeguards which the Commission may still find necessary as a result of Docket 96-150, will protect against any potentiality that a BOC would abuse its market power. For these reasons, the FCC can achieve the competitive environment, efficient delivery of new telecommunications services, rapid deployment of new technologies, and the other consumer benefits envisioned by Congress without imposing unnecessary regulatory or competitive disadvantages on the BOC provision of these services.

NYNEX will comment on the issues raised in the NPRM in the following primary areas: the scope of section 274 and the relationship of section 274 to section 272; the definition of electronic publishing; the structural separation and transactional requirements of section 274, particularly the requirement that a section 274 affiliate “operate independently” from the BOC; the appropriateness of shared administrative services; the marketing provisions of section 274; nondiscrimination safeguards; and enforcement issues. NYNEX will also comment on the NPRM’s discussion of telemessaging and alarm monitoring services.

II. SCOPE OF SECTION 274; RELATIONSHIP OF SECTIONS 274 AND 272
(NPRM ¶¶ 29, 48)

The Commission seeks comment on whether section 274 applies to the BOC provision of both intraLATA and interLATA electronic publishing services (NPRM ¶ 29). Section 274 makes no distinction between intraLATA and interLATA electronic publishing. Congress clearly intended that the BOC provision of both intraLATA and

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interLATA electronic publishing be governed by requirements in section 274 and not by section 272. If Congress had intended to distinguish between intraLATA and interLATA electronic publishing services, it could have done so, as it did in section 272 for interLATA and intraLATA information services.⁴

The Commission also seeks comment on whether a BOC may provide interLATA information services and electronic publishing in the same entity or affiliate (NPRM ¶ 48). Neither section 274 nor section 272 contains any prohibition on the number or variety of electronic publishing or interLATA information services that can be provided by a particular affiliate. However, if a separated affiliate offering electronic publishing services chooses also to provide services covered by section 272, the requirements of sections 274 and 272 should apply on a service by service basis. Congress created certain specific and separate requirements for electronic publishing and interLATA information services. It would therefore not be consistent with Congressional intent to apply the specific requirements intended for one class of services to the other just because such services are being provided through a single corporate entity.

III. DEFINITION OF ELECTRONIC PUBLISHING (NPRM ¶¶ 30-31)

The Commission seeks recommendations on how to define services properly included in the statutory definition of electronic publishing (NPRM ¶ 31). A reading of section 274 clearly shows that Congress intended that a service not be included in the

⁴Section 272 requires a separate affiliate for BOC provision of "interLATA information services, other than electronic publishing (as defined in Section 274(h))," but does not require a separate affiliate for intraLATA information services. § 272(a)(2)(C).

definition of electronic publishing unless it involves both the BOC transmission of and control of, or financial interest in, the content of the service.

Control of or financial interest in information alone, without BOC transmission of the information, is not “electronic publishing” under the 1996 Act. Section 274(a) prohibits a BOC from engaging in electronic publishing “*that is disseminated by means of such [BOC’s] or any of its affiliates’ basic telephone service*” unless the BOC does so through a separated affiliate or electronic publishing joint venture in accordance with the requirements of the statute. “Electronic publishing” not transmitted by the BOC (or any of its affiliates) therefore is not subject to the requirements of section 274.

Similarly, BOC transmission of the information, without BOC financial interest in or control of the information, is also not enough to constitute electronic publishing under the 1996 Act. Section 274(h)(2), which sets forth several exceptions to the definition of electronic publishing, plainly states that “[t]he transmission of information as a common carrier” is not electronic publishing.⁵ The “transmission of information as part of a gateway to an information service” is also not considered electronic publishing under the 1996 Act.⁶ In either case, the BOC would not have sufficient interest in, or control over, the information being transmitted. That Congress intended that the BOC must have some control over the information to be engaged in electronic publishing is further illustrated by the exception from the definition of electronic publishing for “[a]ny other network service

⁵ Section 274(h)(2)(B).

⁶ Section 274(h)(2)(C).

of a type that is like or similar to these network services and that does not involve the generation or alteration of the content of information.”⁷ For these reasons, a service where the BOC, for a transaction fee but with no BOC financial interest in or control of the underlying information, is merely providing access to another entity’s content, or storing data for archival purposes for another entity and making the data available to such entity on demand, should not be considered electronic publishing under the 1996 Act.

The terms “control” and “financial interest” should not be interpreted to include the basic activities and transactions which a BOC must reasonably engage in to provide a gateway service. Although all gateway providers may on occasion attempt to limit the types of information to which their gateways connect (e.g., pornographic or obscene information), this does not imply the type of “control” or ownership of the information that would constitute electronic publishing. If it did, the “gateway” exception would be meaningless. Further, “financial interest” in the content of the information should not be interpreted to include receipt of compensation by the BOC for managing and presenting the content of unaffiliated entities as part of its gateway services, which logically falls within the exception created by section 274(h)(2)(C). Such compensation for the services provided by the BOC does not give the BOC any intrinsic interest, financial or otherwise, in the content of the information itself. To conclude otherwise would have the effect of nullifying the exception for gateway services intended by Congress.

NYNEX therefore urges the Commission to adopt a definition, consistent with the 1996 Act, which clarifies that electronic publishing includes only those services for which

⁷ Section 274(h)(2)(M).

the BOC controls, or has a financial interest in, the content of the information the BOC transmits over its network.

IV. STRUCTURAL SEPARATION AND TRANSACTIONAL REQUIREMENTS (NPRM ¶¶ 35-46)

A. “Operate Independently” Requirement (NPRM ¶ 35)

The Commission seeks comment on what additional regulatory requirements, if any, it should adopt to ensure compliance with the “operate independently” requirement of section 274(b) (NPRM ¶ 35). NYNEX contends that no additional requirements are necessary to protect against alleged potential anticompetitive behavior by the BOC.

There is no statutory authority for the Commission to impose additional requirements. If Congress believed that additional safeguards were necessary, it would have specified them. Rather, Congress decided, and NYNEX agrees, that the structural separation and transactional safeguards enumerated in section 274, along with FCC price cap regulation and any accounting safeguards that the Commission may find necessary as a result of Docket 96-150, are adequate to protect against any potentiality that a BOC would misuse its market power when it provides competitive electronic publishing services.

As the Commission points out, the enumerated structural separation and transactional requirements for a separated affiliate are in some cases different from those applicable to an electronic publishing joint venture (NPRM ¶ 35). For example, a separated affiliate can have no officers, directors or employees in common with a BOC,

and cannot own property with a BOC. There is no such prohibition on an electronic publishing joint venture. If Congress had intended that the rules for each type of entity be the same, or incorporate additional structural separation or other regulatory safeguards not delineated in the 1996 Act, it logically would not have specifically delineated these differing requirements.

Further, expanding the requirements beyond those specified by Congress would be operationally burdensome to the BOCs, and would undermine the operational efficiency and economies of scope that the BOCs could otherwise pass on to consumers in the form of lower prices. BOC affiliates providing electronic publishing services would be subject to duplicative and costly restrictions not required of their competitors, putting them at a competitive disadvantage. The imposition of additional requirements would also impede the Commission's objective to establish safeguards without depriving the BOCs, and ultimately BOC customers, of the benefits of legitimate competitive advantages.

B. Interpretation of Structural Separation and Transactional Requirements (NPRM ¶¶ 36-46)

As noted above, section 274(b) imposes very specific requirements on electronic publishing separated affiliates and electronic publishing joint ventures. There is no need for further defining or limiting these provisions. The Commission asks whether section 274(b)(5)(B) prohibits a BOC and a separated affiliate from sharing the use of property owned by one entity or the other, or prohibits them from jointly leasing any property (NPRM ¶ 42). Section 272(b)(5)(B) states that a separated affiliate (or electronic publishing joint venture) and a BOC may "own no property in common." Sharing or

jointly leasing property is not prohibited or even mentioned. Any such interpretation is an impermissible expansion of the plain meaning of the statute.

**C. Relationship to Separate Affiliate Requirements of Section 272
(NPRM ¶ 47)**

The Commission seeks comment on the interrelationship between the requirements for a “separate affiliate” in section 272(b) and the requirements for a “separated affiliate” and electronic publishing joint venture in section 274(b) (NPRM ¶ 47). In short answer, these respective statutory sections deal with considerably different affiliate activities and should be construed to be independent of each other. Congress has carefully set out specific requirements for both “separate affiliates” and “separated affiliates” and it would therefore not be consistent with Congressional intent for the Commission to impose requirements meant for only one category of affiliate on the other.

D. Corporate Governance, Administrative, and Other Enterprise Level Support Functions (NPRM ¶¶ 35-46)

The separated affiliate and safeguards provisions of the 1996 Act define when a separated affiliate must be used and limit the ways it and its affiliated BOC may relate to one another. Section 274 provides that a BOC may engage in electronic publishing only through a separated affiliate or an electronic publishing joint venture.⁸ The structural and transactional separation requirements applicable to the separated affiliate include:

- (1) operate independently from the BOC;
- (2) maintain separate books, records, and accounts and prepare separate financial statements;

⁸ Section 274(a).

- (3) not incur debt in a manner that would permit a creditor, upon default, to have recourse to the assets of the BOC;
- (4) carry out transactions in a manner consistent with independence, pursuant to written contracts or tariffs that are filed with the Commission and made publicly available, and in a manner that is auditable in accordance with generally accepted auditing standards;
- (5) have separate officers, directors, and employees from the BOC of which it is an affiliate;
- (6) own no property in common with the BOC;
- (7) not use for the marketing of any product or service of the separated affiliate, the name, trademarks, or service marks of the BOC except for names, trademarks, or service marks that are owned by the entity that owns or controls the BOC;
- (8) not permit the BOC to perform, on behalf of a separated affiliate: hiring or training of personnel; purchasing, installation, or maintenance of equipment, except for telephone service that it provides under tariff or contract subject to the provisions of this section; or research and development on behalf of a separated affiliate.⁹

These requirements give rise to a series of issues concerning the extent to which both a BOC and its separated affiliate may utilize an array of common functions provided by a holding company entity or by a service entity owned by the holding company. There can be no dispute that overall corporate governance of the entire enterprise is an appropriate holding company function. Plainly, there are strong economic efficiency arguments for not duplicating administrative support functions in both the BOC and its affiliates. The issue is whether anything in the statute or any policy considerations compel such duplication. As discussed below, there is nothing in the 1996 Act or its legislative history that indicates that Congress intended to prevent the BOCs, and ultimately their consumers, from enjoying the efficiencies of sharing common holding company and administrative support functions.

⁹ Section 274(b).

1. Traditional Holding Company Functions

Section 274 of the 1996 Act contemplates the formation of an affiliate which is structurally and operationally separated from the BOC, but within the structure of the Regional Holding Company. The separated affiliate required by section 274 cannot be owned by a BOC.¹⁰ Thus, section 274 assumes the existence of a holding company entity distinct from the BOC. In addition, section 274 specifically addresses only relationships and transactions between a BOC and its separated affiliate(s). For purposes of this provision, the definition of a BOC clearly does not include a holding company which owns both a BOC and a separated affiliate. Congress intended section 274 to establish a clear separation between the BOC (the wireline telephone exchange service entity) and its separated affiliate. Those requirements do not apply to governance and administrative support functions which are performed on behalf of both the BOC and the separated affiliate by the holding company or other subsidiary of the holding company, provided that they do not compromise the operational independence of the affiliate.¹¹

¹⁰ Section 274(h)(10) provides that “[t]he term ‘Bell operating company’ has the meaning provided in section 3, except that such term includes any entity or corporation that is owned or controlled by such a company (as so defined) but does not include an electronic publishing joint venture owned by such an entity or corporation.” Section 3 of the Act identifies the operating telecommunications subsidiaries of the Regional Holding Companies as the “Bell operating compan[ies]” and includes “any successor or assign of any such company that provides wireline telephone exchanges services” but does not include any other affiliate.

¹¹ It may be argued that this reading of section 274 would permit functions central to the provision of wireline exchange service to be shared between the BOC and its affiliate through the holding company. This argument ignores the distinction between governance and other administrative support services and operating functions. NYNEX does not propose to provide any operating functions out of the holding company.

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2. **Holding Company Provision of Centralized, Enterprise Level Support Functions For Its Subsidiaries**

A holding company (or subsidiary service entity) should be able to perform a number of enterprise-level functions which support both a BOC and its separated affiliates. Nothing in section 274 precludes a holding company from providing these support and administrative services to both a BOC and its separated affiliates nor compels the economically wasteful duplication of such functions.¹²

The language of section 274(b) is clearly based on the FCC's separate subsidiary requirements applicable to the provision of enhanced services and customer premises equipment:

“(2) Each such separate corporation shall operate independently in the furnishing of enhanced services and customer-premises equipment. It shall maintain its own books of account, have separate officers, utilize separate operating, marketing, installation, and maintenance personnel, and utilize separate computer facilities in the provision of enhanced services.”¹³

The influence of the FCC's Rule is clearly evident in the separate subsidiary provisions enacted by Congress, although the provisions are different in certain major respects. For example, Congress did not explicitly prohibit the sharing of computer facilities as the Commission did in Computer II. Congress also created explicit exceptions for certain joint activities (See Section V, below). Nevertheless, the fact that under

¹² Neither the plain language of section 274(b) nor the legislative history support a conclusion that sharing of governance and administrative services is not permitted. The only reference to such services in section 274(b) of the 1996 Act is a provision specifically prohibiting a BOC from performing hiring or training of personnel on behalf of a separated affiliate. See section 274(b)(7)(A). Otherwise, the section is entirely silent about governance and administrative support.

¹³ 47 C.F.R. § 64.702(c)(2).

Computer II rules, the Commission permitted holding companies and service entities to provide governance and administrative support functions to the BOC and a fully separate subsidiary is persuasive evidence that Congress expected and intended the same result in enacting section 274.

These services are generally described as corporate governance functions and enterprise level administrative and support services. Permitting the performance of each of these functions on a common, centralized basis separate from both the BOC and its separated affiliate will promote economic efficiency, without compromising the operational separateness of the BOC and its section 274 affiliate(s). A review of the categories of governance and administrative support functions which are candidates for inclusion in the holding company confirms this conclusion.

a. Corporate Governance - Certain functions are inherent in the responsibility of the holding company for governance of the enterprise as a whole. While the holding company may assign them to a services subsidiary, it would make little sense to assign them to either the BOC or its separated affiliate. Examples of these functions include (but are not limited to) the activities of corporate officers such as the Chairman and Chief Executive Officer, the General Counsel, and the Chief Financial Officer, all of whom have responsibilities to public shareholders which span the entire enterprise. These officers require support from specialized organizations in order to fulfill their governance responsibilities.

These functions are integrally related to the task of governing the overall enterprise and maintaining and enhancing shareholder value. Nothing in the 1996 Act suggests that

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these functions cannot be provided, subject to the Commission's affiliate transaction accounting rules, by a holding company or service entity to both a BOC and its separated affiliate.¹⁴

b. Enterprise Level Administrative and Support Services - Section 274

requires that, among other things, the separate affiliate "operate independently from" and "have no officers, directors and employees in common with" its affiliated BOC.¹⁵ These requirements are directed to the BOC and its separated affiliate, and cannot be read to require the BOC and its affiliate to completely duplicate administrative and support functions of the kind regularly performed on a centralized basis by a holding company or other service subsidiary of the holding company. Enterprise level functions such as human resources, corporate strategies, public relations, external affairs, regulatory and information systems planning and management are frequently provided by centralized organizations.¹⁶ The Commission should therefore permit such services to be obtained by

¹⁴ The Commission's approach to shared services in Computer II demonstrates that holding company or service company provision of such services was accepted, notwithstanding the "maximum separation" requirements. See, e.g., NYNEX Corp. Plan for Sharing Administrative Services, ENF85-24, Order released June 17, 1986 (Chief, Common Carrier Bureau).

¹⁵ Section 274(b)(5)(A).

¹⁶ See, Connell, "Learning to Share," Journal of Business Strategy, March/April 1996, p. 55. The Commission's Computer II experience provides ample evidence of the prevalence, at least in the telecommunications industry, of the centralization of many of these functions. See, e.g., NYNEX Corp. Plan for Sharing Administrative Services, supra. This Order approved a plan which provided for NYNEX Corporate and NYNEX Service Company to provide an array of services on a centralized basis to both the NYNEX Telephone Companies and to NYNEX Business Information Systems Company. These services include: comptroller and treasury functions, corporate secretarial, corporate planning, corporate marketing, legal, personnel, public relations, federal regulatory and governmental relations. It is important to note that the Computer II rules required, as does section 274, separate officers and directors. 47 C.F.R. § 64.702. The Commission has had no experience which suggests that the shared services permitted by Computer II have adversely impacted the independence of those subsidiaries.

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a separated affiliate from its holding company or the service subsidiary of the holding company.

c. Specific Services and Functions - The description of these functions below demonstrate that they do, in fact, involve a combination of governance and administrative support, and are not operating functions.¹⁷

1. Chairman and Chief Executive Officer - Ultimately responsible to the Board of Directors and to the shareholders for the overall performance of the enterprise.

2. Chief Financial Officer - Responsible, on an enterprise-wide basis, for financial assurance and planning, accounting practice, auditing, taxes, financial and treasury operations, external financial reporting, investment analysis, and planning risk management, affiliated transaction compliance, pension fund management, and investor relations. These functions are plainly holding company type functions, integral to the Chief Financial Officer's responsibility to the Board and the corporation's shareholders.

3. General Counsel - This group of functions includes enterprise-wide responsibility for substantive legal advice to the management of the business with respect to corporate and securities matters, labor and employment, antitrust, regulatory, litigation, business development, taxes and commercial law, as well as for legal compliance programs and the corporate secretarial functions.

4. Strategic Planning - The task of enterprise-level strategic planning, including resource allocation, technology selection, overall marketing policies and strategies, and brand name identity/promotion¹⁸ are clearly governance functions appropriate for a holding company or service entity to perform, rather than a BOC or a separated affiliate.

¹⁷ It is also critical to recognize that a prohibition on sharing of operating personnel raises substantively different issues than the centralization of administrative and support services outside the BOC. First, section 274(b) clearly requires the separate affiliate to operate independently of the BOC. It does not, however, require it to conduct its business without the governance of and administrative support from its ultimate parent. Second, sharing of operating personnel and administrative services present significantly different potential risks of harm to ratepayers and competition. These potential harms are not present in the utilization of certain centralized administrative functions whose role is to support business unit operating personnel. Finally, the centralized administrative services NYNEX believes should be provided by the holding company or service company are clearly back-office type functions rather than operating functions.

¹⁸ NYNEX's success in the emerging competitive markets will depend, in part, on its ability to offer "a widely recognized brand name that is associated with telecommunications services" NPRM ¶ 6.

5. External Affairs - The enterprise's success requires integrated public relations, regulatory and government affairs strategies. This function includes activities undertaken on behalf of the holding company and its stakeholders, as well as services provided to operating business units.

6. Chief Information Officer - The development of common platforms, interoperability standards, and software development paradigms and the operation of data centers, intranets and data networks are plainly services which should be performed centrally for the enterprise as a whole. These services are commonly outsourced and readily susceptible to detailed cost assignment.

7. Human Resources - People related functions which have an enterprise-wide focus include benefits planning and administration, management compensation, personnel administration, the Office of Ethics and Business Conduct, labor relations planning, succession planning and personnel development.

8. Specialized Expertise - Other functions, requiring specialized expertise to assure maximum cost effectiveness, also exhibit the characteristics of governance and administrative support services. The following examples illustrate this category of services:

Real estate operations (as distinct from common occupancy of a particular location) requires real estate professionals familiar with identifying and negotiating the acquisition of suitable commercial real estate locations and the provision of routine maintenance services;

Logistics management is necessary to assure fast, accurate distribution to all locations of internal company mail or materials; and

Technology analysis and evaluation, such as that performed today by NYNEX Science and Technology experts on behalf of all NYNEX entities on a project by project cost-reimbursable basis.

d. Summary of NYNEX's Position on the Provision of Centralized,

Enterprise Level Support Functions - The above descriptions of governance and administrative support functions demonstrate that these functions are truly enterprise-wide in their scope. These are functions which are commonly centralized at a holding company or service entity, for both economic and governance reasons. Congress did not intend, in